(24)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

C. T. EARLE,

Petitioner,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, et al.,

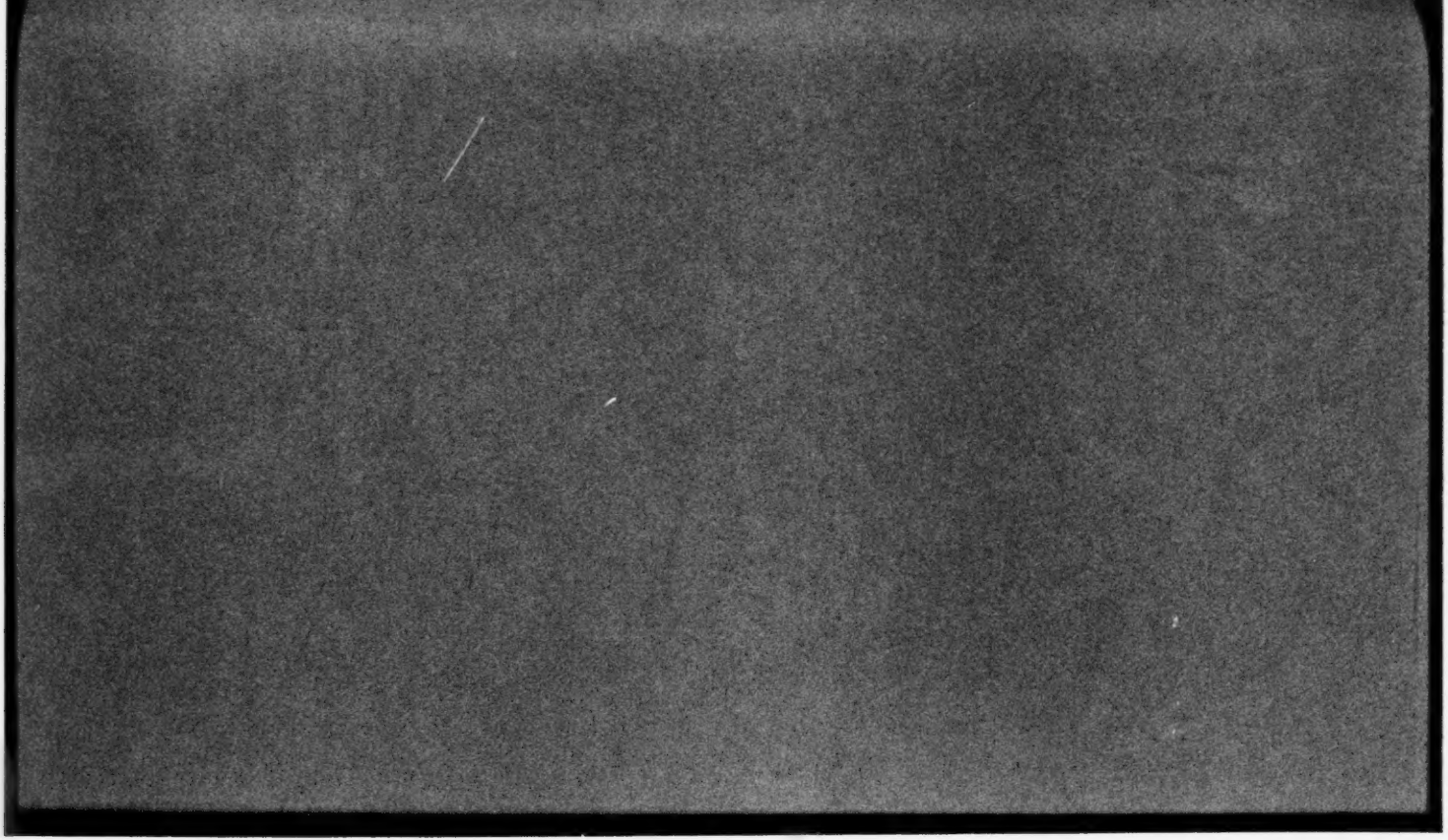
Respondents.

No. 440

REPLY TO THE PETITION FOR WRIT OF CERTIORARI

[redacted]

V. W. FOSTER, and
CHAS. A. HELSELL, of Chicago, Ill.,
CLINTON H. McKAY, of Memphis, Tenn.,
Of Counsel.



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The sole ground on which the writ of certiorari is sought is that petitioner has been denied a right, privilege or immunity granted under the Railway Labor Act of Congress, 44 Stat. at L. 577, chap. 347, as amended, 48 Stat. at L. 1185, chap. 691, 45 U.S.C.A., secs. 151 et seq. No claim is made that the opinion of the Court of Appeals of Tennessee on its face denies such right. *State of Minnesota v. National Tea Company*, 309 U. S. 551. This Court is asked to find that the opinion necessarily has that effect.

Perhaps it is unnecessary to point out that before this Court will grant certiorari it must affirmatively appear of record not only that the federal question here relied on was distinctly presented to the state courts for decision, but that its decision was necessary to a determination of

the case, and that the federal question was actually decided or that the judgment could not have been rendered without deciding it.

Shulthis v. McDougal, 225 U. S. 561;
Lynch v. People of New York, 293 U. S. 252;
State of Minnesota v. National Tea Co., 309 U. S. 551;
Cleveland, etc., R. Co. v. Cleveland, 235 U. S. 50;
Parker v. McLain, 237 U. S. 469;
Chesapeake, etc., R. Co. v. McDonald, 214 U. S. 191.

As shown hereinafter, no substantial federal question was presented in the trial court and none was decided; no federal question of any kind was presented in the Court of Appeals of Tennessee or decided in that court; and no substantial federal question was presented to the Supreme Court of Tennessee, or necessary to be decided or was decided by that court.

The employment contract out of which the suit arises merely had as its background the Railway Labor Act of Congress of May 20, 1926, before the amendment of June 21, 1934. That is not enough.

Barnhart, et al. v. Western Maryland Ry. Co., 128 F. 2d. 709; certiorari denied October 19, 1942.

All that the state courts were called upon to find was the terms and provisions of the contract under which petitioner sued and to construe and apply those terms and provisions.

This Court, of course, is not now concerned with the correctness of the construction of the contract made by the state court. This Court must assume the contract means what the Court of Appeals of Tennessee held it to mean, and then determine whether that construction denies petitioner a right or privilege granted by the Railway Labor Act of Congress.

STATEMENT OF THE CASE

Petitioner instituted this suit in the state court to recover damages for the alleged breach of his individual contract of employment with respondents, claiming that respondents breached petitioner's contract of employment by refusing to reemploy him as a switchman in the Memphis yards. The Court of Appeals of Tennessee held that there was no breach and, therefore, dismissed petitioner's suit. The Supreme Court of Tennessee denied certiorari.

Petitioner was employed by respondents on September 26, 1923 as a switchman or yardman. He continued in the employ of the respondents until January 20, 1933, on which date due to a falling off in business, occasioned by the economic depression, respondents reduced the forces employed in the Memphis yards and on that day petitioner, together with 55 or 60 other yardmen, was let out of the service. In his original bill petitioner did not claim that the action of respondents in letting him out of the service on January 20, 1933 was wrongful and the Court of Appeals held that action was in accordance with the terms of petitioner's contract of employment with respondents.

Petitioner's individual contract of employment had as its basis the Brotherhood of Railroad Trainmen contract which in Request 79 and the Answer thereto provided that for a period of six months after he was so let out of the service he should retain his seniority rights, and if during that six months' period men were employed, those let out of the service would be "reemployed" and "taken back into the service" in accordance with their seniority. Petitioner alleged that he worked under his

original contract of employment on May 29, 30, 31, 1933 and again on June 30, 1933, and that, therefore, when respondents after the expiration of the six months from January 20, 1933, to-wit: on July 26, 1933, notified him by letter that his seniority had been lost by the expiration of the six months' period, that action was wrongful and a breach of his original contract of employment. Petitioner claimed that his work on May 29, 30, and 31 and on June 30, 1933 was employment under his original contract of employment; and that, therefore, he had not been "out of the service" for six months on July 26, 1933 when the notice was given; hence, his original contract of employment was breached.

On the other hand, respondents throughout have taken the position that the services performed by petitioner on May 29, 30 and 31 and again on June 30, 1933 were not services performed under his original contract of employment; that the work performed on those four days was performed under a special contract and not under his original contract of employment; that the work done by him on those four days was what is known in railroad parlance as "emergency work"; that emergency work did not have the effect of tolling or of extending the six months' period nor did it affect the seniority rights of any of the men laid off, including petitioner; that it was not a "reemployment" or a "taking back into the service" within the purview of petitioner's original contract of employment, and that, therefore, the six months' period had elapsed on July 26, 1933, and petitioner's contract of employment had not, therefore, been breached.

It is obvious, therefore, that the question presented to the state courts for decision was not what the status of petitioner was during the six months' period. That was fixed by the employment contract. The sole question presented to the state courts was whether the petitioner had been "out of the service" to exceed six months. This question is to be determined by ascertaining whether the work on the four days in question interrupted the running of the six months' period. That question, in turn, is to be determined by ascertaining the meaning of certain technical terms of petitioner's employment contract, which terms in railroad parlance and among railroad people have a well-known and universally recognized meaning; and further, by ascertaining whether the work done on the four days mentioned was done under petitioner's original contract of employment or under a special contract for temporary employment. If the work was done under a special contract of temporary employment and not under the original contract of employment, as the state courts held it was, then the question presented was the effect, if any, such special employment had on his seniority rights under the original contract of employment.

Obviously, all of these questions involve the interpretation and application of the employment contract in the light of the settled course of conduct of the interested parties, and are questions of state law rather than federal law.

FACTS OF THE CASE

Long prior to the time petitioner entered into his individual contract of employment with the respondents, respondents and the Brotherhood of Railroad Trainmen (hereinafter referred to as the Brotherhood) had entered into a contract providing for working conditions, rates of pay, manner of employment and discharge of employees, etc. That contract was from time to time added to and changed by the contracting parties. Under that contract, from its inception to the present time, respondents always had the unquestioned right to reduce forces whenever the business of the railroad company did not justify retaining all of its employees in the service. Prior to 1914 employees so let out lost all of their rights, seniority and otherwise, their status then being just as if they had never been employed; but the Brotherhood desired to have the contract changed in this respect and for many years endeavored to effect such a change. The efforts of the Brotherhood resulted in 1914 in the agreement embodied in Request 79 and the Answer thereto. Changes in the contract were made in the form of a request by the Brotherhood for the proposed changes and the answer of the railroad company thereto. Under this particular amendment to the Brotherhood contract it was provided in substance that if an employee was let "out of the service" as a result of reduction in force due to the lack of business, the railroad company agreed that if such employee was "reemployed" and "returned to the service" within six months from the time he was let out of the service he would be reemployed in the order of his seniority, and in that event would be considered as having been in "continuous service."

At once it will be perceived that the proper construction of this contract depended on what the contracting parties meant by the words "out of the service," "reemployed" or "returned to the service."

The record shows that those terms have a well known meaning in railroad parlance. At the time this amendment was made, both the officials of the railroad company and the officials of the Brotherhood thoroughly understood exactly what those words meant. They well knew that performing emergency work such as petitioner did on the four days in question was not a reemployment and did not constitute taking him back into the service or interrupt the running of the period he was out of the service. Not only did the officials of the railroad company so testify, but all the officials of the Brotherhood, both the general officials of the Brotherhood in Chicago and all of the officials of the local lodge in Memphis, likewise so testify. So did all of the individual members of the Brotherhood who were called as witnesses, except petitioner. In addition, the general counsel of the Brotherhood, Mr. W. A. Endle, of Cleveland, Ohio, caused himself to be appointed amicus curiae when this case was pending in the Court of Appeals of Tennessee and filed a printed brief in that court, urging on the court the meaning of the terms as above indicated. The Brotherhood, both by the testimony of all its officials and by the brief of its General Counsel, supports in every detail the contentions of respondent in this litigation.

Not only that, but petitioner filed a claim in his local lodge at Memphis, setting up the same contention as here made, and the local lodge, construing these words just as the Court of Appeals of Tennessee did, held that pe-

titioner had no claim. Petitioner thereupon appealed to the General Chairman of the Brotherhood in Chicago (the general chairman corresponds to the president of an ordinary corporation), and the general chairman made the same decision.

Petitioner then appealed to the Board of Directors of the Brotherhood which body likewise denied his claim. (R., p. 164). In *L&NRR Co. et al. v. Miller,* 38 N. E. (2) 239, the Supreme Court of Indiana held such decisions by the Brotherhood tribunals were binding on the employee and this Court on its opinion day on October 12 denied certiorari in that case.

The record, discloses, therefore, that both respondents and the Brotherhood are and have always been in perfect accord as to the meaning of these words and both agree that by doing the work on the four days in question petitioner was not "reemployed" and was not "taken back into the service."

The record in this Court shows that the record in the state courts is "a very large record" and that "a vast amount of testimony has been taken by both sides." (R., p. 35). This testimony, as discussed in the opinion of the Court of Appeals of Tennessee, not only shows what the contracting parties meant by the use of those terms, but further shows that from the time the amendment to the contract was made in 1914 to the present time it has been so construed not only by respondents and by the Brotherhood, but by all of the individual members of the Brotherhood. This testimony further shows that when petitioner entered the service of respondent in 1923 he well knew the meaning of those terms in the contract and well knew that the contract

meant just exactly what the appellate courts of Tennessee have held it to mean and what the Brotherhood, both the local lodge and the general lodge in Chicago, knew it meant. The state courts have held that petitioner acquiesced in that meaning; that he knew the contract was being given that meaning by the parties, by the men, as well as by himself. Moreover, the state courts held that when petitioner adopted as his own the contract between the Brotherhood and respondents, he adopted this meaning as a part of the contract.

HOLDING OF THE APPELLATE COURTS OF TENNESSEE

The Court of Appeals of Tennessee, construing the contract in the light of the "vast amount of testimony taken by both sides" (R., p. 35), held that when petitioner entered the service of respondents the contract between respondents and the Brotherhood became the basis of his individual contract, including the amendment made in 1914 known as Request 79 and Answer thereto; that the work performed by petitioner on May 29, 30, 31 and June 30, 1933, was not an employment under his original contract of employment, and, therefore, did not amount to a "reemployment" or "taking back into the service" within the purview of Request 79 and Answer thereto; that his employment on those four days was a special employment under a special contract for temporary emergency work; that this contract for temporary emergency work was entirely separate and apart from his original contract of employment, and was inconsistent with many of the terms of his original contract of employment. As to this, the Court of Appeals said:

> "To the contrary, he was manifestly working under separate and radically different contracts of tem-

porary employment, one made on May 29, 1933, and another on June 30, 1933. * * *

"After mature reflection, we think the clearest and simplest view of this whole matter is that the complainant's employment on the four days in question is to be regarded as having been under entirely separate and distinct contracts which were not in writing but arose by implication from the circumstances, the terms and conditions of which were fixed by usage prevailing among those engaged in the activities and operations of the Memphis Terminal Yards and acquiesced in by the complainant."

(R., pp. 204-205).

The court, therefore, held that the four days' emergency work was not done under his original contract of employment, and for that reason had no effect on his seniority rights under that contract. That being true, his seniority rights were not preserved by that emergency work but were lost after the expiration of the six months period from January 20, 1933, so that the failure to reemploy him on and after July 26, 1936, was not wrongful and was not a matter of which he could complain.

The Court of Appeals of Tennessee further held that under the authority of *Cross Mountain Coal Company v. Ault,* 157 Tenn. 461, the agreement between the Brotherhood and these respondents became a part of petitioner's individual contract of employment, and that Request 79 and Answer thereto was at that time a part of the Brotherhood contract; that respondents had the right to let petitioner out of the service because of the necessity of reduction in forces and that all the rights petitioner thereafter had were embodied in Request 79 and Answer thereto; that the terms contained Request 79 and Answer thereto, and particularly the terms "returned to the serv-

ice," "taken back into the service," "reemployed" and "out of the service" had in railroad parlance a well known and universally recognized meaning; that when respondents and the Brotherhood made the contract each of them knew and understood the meaning of those terms in railroad usage, and each of them knew that those terms were being used in that technical sense and bore that meaning; that since Request 79 and Answer thereto became a part of the contract in 1914 on down to the present time, in the practical operation of the parties under the contract those terms had been given this well known universally accepted meaning; that both the Brotherhood and the respondents in their long operation under the contract had invariably and in every instance placed the same construction on those terms.

Under the meaning given those words by the parties to the contract, and in railroad parlance, doing emergency work of a temporary character did not constitute being "reemployed" and did not constitute being "returned to the service" and did not alter petitioner's status as "out of the service" as those words and phrases are used in Request 79 and Answer thereto.

The Court of Appeals of Tennessee further held that when this petitioner adopted the Brotherhood contract as a part of his individual contract of employment he knew the meaning of those terms and knew that doing emergency work did not constitute a reemployment or a return to the service; that throughout the time he remained an employee petitioner well knew the meaning of those terms and acquiesced therein. The Court said: "with respect to his acquiescence in the interpretation given the contract, we rest our decision on the evidence aliunde." (R., pp. 223-224).

In view of the foregoing, the Court of Appeals of Tennessee held that petitioner's contract meant that doing emergency work was not a "reemployment" and was not a "return to the service," and that, therefore, such work did not toll the running of the contractual period of six months. Hence, that on July 26, 1933, after the six months had elapsed petitioner's seniority rights had expired and he bore no relationship to respondents as an employee or otherwise.

We submit it is apparent from the foregoing statement of the holding of the Court of Appeals of Tennessee that petitioner has been denied no right or privilege granted him by the Railway Labor Act of Congress. We know of no act of Congress which prohibits an employee from entering into a special contract with his employer to do temporary emergency work, agreeing that such temporary emergency work, done under a special contract, shall not affect his seniority rights under his regular contract of employment.

Nor do we know of any act of Congress that prohibits an employee from entering into a special agreement providing that the doing of temporary work known in railroad parlance as "emergency work" shall not constitute being taken back into the service. So far as we are aware, Congress permits a railroad employee to make whatever contract he desires in regard to such matters.

THE QUESTION PRESENTED TO THIS COURT

Briefly stated, the precise question presented to this Court for decision is this:

Petitioner entered into a contract of employment with respondents under the terms of which respondents had the right to let petitioner as well as others out of the service whenever the business of respondents did not justify his being retained in the service; the contract further provided that if petitioner, along with others likewise let out of the service, were reemployed and taken back into the service within six months from the time they left the service, the men would be reemployed in the order of their seniority, and if so reemployed within six months they will be considered as having been in continuous service; but it was also provided in the contract that doing "emergency work" of a temporary nature was not to be considered as a reemployment or as being taken back in the service within the purview of the contract and did not, therefore, interrupt the running of the contractual period of six months. The question presented to this Court is whether or not that contract deprives petitioner of a right or privilege granted to him by the Railway Labor Act of Congress.

Or considering the further holding of the Court of Appeals of Tennessee: Petitioner entered into an individual contract of employment of a permanent nature with respondent under the terms of which if he were let out of the service on account of the falling off of business, then if he were taken back into the service during the succeeding six months he would retain certain seniority rights under that contract; but it was further

provided that if during the six months period he was specially employed to do some particular work of a temporary nature, which employment was not made under the original contract of employment, such temporary employment, it was agreed, would not affect his seniority rights under the original contract for permanent employment.

Does such contract deprive petitioner of a right or privilege granted by the Railway Labor Act of Congress. We submit the answer is obvious.

The above is precisely what the state courts held petitioner's contract meant. If petitioner at the time he entered into his contract for employment had put therein an express provision that "in the event while laid off on account of falling off in business I do emergency work I agree that such work will not be performed under this contract of employment and will, therefore, have no effect on my seniority rights," manifestly petitioner would not thereby contract away any right granted him by an Act of Congress; or if petitioner had inserted in his contract of employment a provision that "I agree that emergency work shall not constitute 'reemployment' and shall not constitute 'return to the service' under this contract, and especially under 'Request 79 and Answer thereto'," such a provision, we submit, would not affect any right or privilege granted by the Railway Labor Act of Congress.

We submit, therefore, that for the same reason the construction placed on petitioner's contract by the appellate courts of Tennessee denied him no federal right.

NO FEDERAL QUESTION RAISED IN STATE COURTS

We submit that petitioner did not raise in the state courts the alleged federal questions on the basis of which he now seeks to invoke the jurisdiction of this Court.

In his petition for certiorari in this Court, petitioner contends that the federal questions were raised (1) by the motion made in the Chancery Court to strike certain parts of the answer, (2) by his proposition of fact No. 29 filed in the Chancery Court, and (3) by assignment of error 7 in his petition for certiorari filed in the Supreme Court of Tennessee.

The motion to strike respondents' answer (R., pp. 19-26) filed in the Trial Court is too lengthy to summarize here, but we submit the reading thereof discloses that no federal right or privilege was there claimed.

In petitioner's proposition of fact No 29 (R., pp. 151-152) also filed in the Trial Court no federal right or privilege here relied on was claimed. The only proposition asserted there was that respondents were estopped to assert that petitioner's contract of employment "conflicted with" or was "amendatory to" the contract filed with the Mediation Board. The law of estoppel, we submit, is not a right or privilege granted by an Act of Congress. The doctrine of estoppel arises from the common law. Moreover, the contract involved in this suit is admitted to be the identical contract filed with the Mediation Board and respondents have never contended otherwise.

We submit that the failure to raise the so-called federal questions in the trial court precludes petitioner

from raising them in this Court. *Erie Railroad v. Purdy*, 185 U. S. 148.

Petitioner makes no claim that any federal questions were raised in the Court of Appeals of Tennessee, the judgment of which Court is final and from which there is no appeal as a matter of right. *Tennessee Code* of 1932, Sec. 10629.

In the petition for certiorari filed in the Supreme Court of Tennessee, assignment of error 7 (R., pp. 229-230), petitioner for the first time claimed that a right or privilege granted under an Act of Congress had been denied him. He there claimed that a federal right or privilege was denied him because (1) respondent is estopped to assert that the contract filed with the Mediation Board is not the true contract; and (2) that his contract provides for a trial in the event of a discharge, which trial, he asserts, was denied him. No claim was made, however, that the Court of Appeals defined "employee" and "in the service" different from the way those terms are defined in the Railway Labor Act. Petitioner is limited now to the grounds then asserted. *Erie Railroad v. Purdy*, 185 U. S. 148.

It results, therefore, that petitioner made no claim in the trial court that he possessed a federal right, nor did he make such a claim in the Court of Appeals. He made such a claim for the first time in the petition for certiorari filed in the Supreme Court of Tennessee. We submit that comes too late, but if we are mistaken as to that, then we say that the two grounds set up in the assignments of error in the Supreme Court of Tennessee are not based upon rights or privileges granted by the Railway Labor Act of Congress.

Discussing specifically the specifications of error filed in this Court, we say as to specification of error I that nowhere in any state court did petitioner claim a federal right or privilege on the ground that the definition of "employee" and "in the service" in Section I of the Railway Labor Act conferred a federal right and privilege. Petitioner cannot make that claim here for the first time. *Erie Railroad v. Purdy*, supra.

Under specification II the claim is that in the overruling of petitioner's motion to strike certain parts of the answer petitioner was denied a right or privilege granted him under Section 6 of the Railway Labor Act. That question was not raised in any of the state courts, but is raised in this Court for the first time. Moreover, no federal right is set up in the motion to strike.

As to specification III, we submit that the doctrine of equitable estoppel is not a right or privilege granted by any Act of Congress. In addition there is no basis for the claim, for all concede that the contract filed with the Mediation Board is identical with the contract sued on and no court through which this case has passed has held to the contrary.

Under specification IV this Court is asked to reverse the Court of Appeals on the merits of the case.

We submit, therefore, that no federal question here relied on was asserted in the state courts.

NO MERITS IN SPECIFICATIONS OF ERROR

Petitioner first insists that he was denied a right or privilege granted by an Act of Congress because he says the Court of Appeals of Tennessee did not define "employee" and "in the service" as those words are defined in Section 1 of the Railway Labor Act, as construed in *Nashville, etc., Ry. v. Railway Employees,* 93 Fed. (2d) 340. That act, that court said: "establishes the machinery by which collective bargaining between interstate carriers and the several crafts or classes of their employees may be carried on through freely selected representatives of both parties."

The purpose of the Act, therefore, is not to command what shall be included in every collective bargaining agreement, nor to regulate the terms of such agreements, but its sole purpose is to set up machinery to enforce whatever agreements the parties themselves make. Each employee is thereafter free to make his own contract, and to include therein whatever terms the parties agree to. *Virginia Ry. Co. v. System Federation No.* 40, 300 U. S. 515. The effect of the Act is not to make void every contract an employee makes with the carrier if in the contract the word "employee" or "in the service" is agreed to have a meaning different from the meaning of those words as used in the Act. The Act provides "when used in this chapter" "and for the purposes of said chapter" certain words used therein shall have a certain meaning. Those definitions obviously are to be used only in construing the Act, and are not necessarily the meanings to be attached to those words in every contract made by an employee of any railroad in the United States.

The sole case relied on by petitioner is *Nashville, etc., Ry. v. Railway Employees,* supra. The only question presented there was what employees were entitled to vote in the election for a bargaining representative, which election was held under the provisions of the Act. The Court held that a furloughed employee had the right to vote in an election held under the terms of the Act, since the Act provided that all employees could vote, and he was an employee as defined in the Act since his relationship with the employer had not completely terminated, and that he had sufficient interest in the election to entitle him to vote. But that is precisely what the Court of Appeals of Tennessee held in this case. During the six months period the Court of Appeals held that "a yardman let out in the reduction of forces while not in the service that in the sense he formerly was, nevertheless sustained for the period specified a contractual relation to the carrier." (R., p. 186.)

That is precisely the definition of employee contained in the Act and is in accord with the holding of the Court in *Nashville, etc., Ry. v. Railway Employees,* supra.

It was not necessary for the Court of Appeals of Tennessee to decide what petitioner's status was during the six months period. What the court was called upon to decide was: (1) when petitioner was called to do temporary emergency work was he thereby "returned to the service" as those words were used in the contract, and (2) was the employment to do temporary emergency work made under a special contract, or was it made under petitioner's original contract of employment so as to affect his seniority rights under his original contract of employment.

The Court of Appeals held that when petitioner worked during the four days in May and June he was not working under his original contract of employment, but was working under a special contract for temporary work, and that the work under the special contract for temporary work did not affect his rights under his original contract for regular employment.

That one who is employed for a particular transaction or for temporary work does not thereby become an "employee" is well settled.

> *Louisville, etc., Ry. v. Wilson,* 138 U. S. 501;
> *Clark, et al. v. Renninger,* et al., 89 Md. 66;
> *Lewis v. Fisher, et al.,* 80 Md. 139;
> *Daub, et al. v. Maryland Cas. Co.,* 148 S. W. (2d) 58.

In *Louisville, etc., Ry. v. Wilson,* supra, the Court said:

> "The terms 'officers' and 'employees' both, alike, refer to those in regular and continual service. Within the ordinary acceptation of the terms, one who is engaged to render service in a particular transaction is neither an officer nor an employe. They *imply continuity of service,* and *exclude those employed* for a *special and single transaction.*"

While there is no merit in the foregoing contention of petitioner, yet we repeat petitioner did not claim in the Chancery Court, in the Court of Appeals or in the Supreme Court of Tennessee that he was denied a federal right or privilege on the ground above discussed.

Specification II is that the trial court erred in overruling the motion to strike respondents' answer, claiming that this action deprived petitioner of a right or privilege granted by an Act of Congress, because it vio-

lated Section 6 of the Railway Labor Act which forbids a change in the contract except in the manner provided in the Act. In the first place, the motion to strike (R., pp. 19-26) does not invoke any federal right. In the second place, the Courts of Tennessee have held that there was no change in the contract, and this holding of the state courts cannot be questioned here. There has been no question made throughout the litigation that the contract made with petitioner was changed, but the sole inquiry was what the contract meant. It results, therefore, that (1) no federal right was invoked in the motion to strike and (2) none was denied.

Under specification III it is claimed that respondent is equitably estopped on account of the contract it filed with the Mediation Board. With all due deference, we are wholly unable to follow petitioner in this contention. It is conceded that the contract filed with the Mediation Board in 1934 is identical with the contract petitioner made with this respondent and on which he sues. Since there was no change in the contract, we are wholly unable to understand how petitioner has been denied a federal right.

In addition, the amendment to the Railway Labor Act relied on (requiring respondent to file the contract with the Mediation Board) was passed long after July 26, 1933, when it is claimed petitioner's contract was breached, and could not, therefore, affect petitioner's rights. This 1934 amendment to the Act requires that the contract in effect April 1, 1934, be filed, and this was long after petitioner left the service of respondent. Whatever may have been the contract on April 1, 1934, would not have affected petitioner's rights alleged to flow from a breach

in 1933. Further, equitable estoppel can be invoked only when the petitioner changed his position to his prejudice relying on the act upon which he bases the estoppel (Baird v. Fidelity, etc., Ins. Co., 178 Tenn. 653), and manifestly petitioner cannot claim here that in 1933 he relied on a contract that was filed in 1934.

Lastly, whether estoppel applies or not is not a federal question. That is a question of state law for the state courts to decide.

Under specification IV petitioner asks this Court to reverse the appellate courts of Tennessee on the merits of the case, without regard to any federal question. Manifestly, this Court has no such jurisdiction.

ALL RIGHTS CLAIMED WERE GRANTED

Another complete answer to the contention of petitioner is that all rights claimed here, federal or otherwise, were granted. None was denied. We submit if the right to have the words "employee" and "in the service" defined in this litigation as they are in the Railway Labor Act is a federal question, then petitioner has been granted that right by the opinion of the Court of Appeals of Tennessee, for that Court has defined "employee" and "in the service" (R., p. 186) exactly as the Railway Labor Act does. If the right to have respondents held estopped from claiming that the contract filed with the Mediation Board is different from the contract sued on is a federal right, then petitioner has not been denied that right because it is nowhere denied that the two contracts are identical, and no state court has held to the contrary. If it be said that petitioner had a federal

right to have respondent not change its contract with petitioner, except as provided by the Act, then we answer that the contract has not been changed by the litigants or by the state courts. The courts of Tennessee have merely held what the two contracts, concededly identical, meant.

It results that every right claimed to be a federal right has been granted petitioner and none has been denied him.

We submit, therefore, that the petition for a writ of certiorari should be denied.

Respectfully submitted,

MARION G. EVANS,
THOS. A. EVANS,
LARRY CRESON,
Attorneys for Respondent.

V. W. FOSTER, and
CHAS. A. HELSELL, of Chicago, Ill.,
CLINTON H. McKAY, of Memphis, Tenn.
Of Counsel.